

RECORD  
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10-25-2000

U.S. DEPARTMENT OF COMMERCE  
Patent and Trademark Office

Tab settings &lt;&lt;&lt; &gt;&gt;&gt;

To the Honorable Commissioner of Patents and Trademarks.

Original documents or copy thereof.

## 1. Name of conveying party(ies):

DJ Pharma, Inc.  
12730 High Bluff Drive, Suite 160  
San Diego, CA 92130

- ☐ Individual(s) ☐ Association  
☐ General Partnership ☐ Limited Partnership  
☒ Corporation-State Delaware  
☐ Other

Additional name(s) of conveying party(ies) attached? ☐ Yes ☒ No

## 3. Nature of conveyance:

- ☐ Assignment ☐ Merger  
☒ Security Agreement ☐ Change of Name  
☐ Other

Execution Date: August 31, 2000

## 2. Name and address of receiving party(ies):

Name: Bank of America, N.A.

Internal Address: IL1-231-11-22

Street Address: 231 South LaSalle Street

City: Chicago State: IL ZIP: 60697

- ☐ Individual(s) citizenship  
☐ Association  
☐ General Partnership  
☐ Limited Partnership  
☐ Corporation-State  
☒ Other National Banking Association

If assignee is not domiciled in the United States, a domestic representative designation is attached: ☐ Yes ☐ No

(Designations must be a separate document from Assignment)

Additional name(s) & address(es) attached? ☐ Yes ☐ No

## 4. Application number(s) or registration number(s):

## A. Trademark Application No.(s)

75/731,475  
75/731,400  
75/731,424

## B. Trademark registration No.(s)

N/A

Additional numbers attached? ☐ Yes ☒ No

## 5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Liisa M. Thomas

Internal Address: Gardner, Carton & Douglas  
Suite 3300

Street Address: 321 North Clark Street

City: Chicago State: IL ZIP: 60610

## 6. Total number of applications and registrations involved:

3

7. Total fee (37 CFR 3.41): \$ 90.00

☒ Enclosed☐ Authorized to be charged to deposit account

## 8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

10/24/2000 MTHAI1 00000151 75731475

01 FC:481 40.00 DP  
02 FC:482 50.00 DP

## 9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Liisa M. Thomas

Name of Person Signing

Signature

Date

10.10.00

Total number of pages comprising cover sheet:

1

OMB No. 0651-0011 (exp. 4/94)

Do not detach this portion

Mail documents to be recorded with required cover sheet information to:

Commissioner of Patents and Trademarks  
Box Assignments  
Washington, D.C. 20231

Public burden reporting for this sample cover sheet is estimated to average about 30 minutes per document to be recorded, including time for reviewing the document and gathering the data needed, and completing and reviewing the sample cover sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Office of Information Systems, PK2-1000C, Washington, D.C. 20231, and to the Office of Management and Budget, Paperwork Reduction Project (0651-0011), Washington, D.C. 20503.

TRADEMARK  
REEL: 002160 FRAME: 0180

## TRADEMARK SECURITY AGREEMENT

**THIS TRADEMARK SECURITY AGREEMENT** is made as of August 31, 2000, by and between **BANK OF AMERICA, N.A.**, in its capacity as Lender (the "**Lender**"), and **DJ PHARMA, INC.**, a Delaware corporation (the "**Pledgor**").

### W I T N E S S E T H:

**WHEREAS**, pursuant to a certain Loan and Security Agreement (including all annexes, exhibits or schedules thereto, and as from time to time amended, restated, supplemented or otherwise modified, the "**Credit Agreement**"), dated of even date herewith, between Pledgor and the Lender, Lender has agreed to make Loans to the Pledgor; and

**WHEREAS**, to induce Lender to make such Loans to the Pledgor under the Credit Agreement, as provided therein, Pledgor has, pursuant to the Credit Agreement, granted a security interest in the Collateral, as defined in the Credit Agreement, in favor of the Lender; and

**WHEREAS**, as a condition precedent to any extension of credit under the Credit Agreement, Pledgor is required to execute and deliver this Agreement and to grant to the Lender a continuing security interest in all of the Trademark Collateral (as defined below), to secure repayment of the Obligations pursuant to and as defined under the Credit Agreement; and

**WHEREAS**, Pledgor has duly authorized the execution, delivery, and performance of this Agreement;

**NOW, THEREFORE**, for good and valuable consideration, the receipt of which is hereby acknowledged, and in order to induce Lender to make Revolving Loans and other extensions of credit to the Pledgor pursuant to the Credit Agreement, Pledgor agrees with Lender as follows:

1. **Definitions.** Unless otherwise defined herein or the context otherwise requires, terms used in this Agreement, including its preamble and recitals, have the meanings provided in the Credit Agreement.

2. **Grant of Security Interest.** For good and valuable consideration, receipt of which is hereby acknowledged, to secure all of the Secured Obligations (hereinafter defined), Pledgor does hereby mortgage, pledge, hypothecate, and grant to the Lender, a continuing security interest in, to, and under, all rights, titles and interests of Pledgor in, to and under the following property (the "**Trademark Collateral**"), whether now existing or hereafter arising or acquired:

(a) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, other source of business identifiers, prints and labels on which any of the foregoing have appeared or appear, designs and general intangibles of like nature, all registrations and recordings thereof, and all applications in connection therewith, including registrations, recordings,

and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States or any State thereof, including those referred to in Item A ("Trademarks") of Attachment 1 hereto;

(b) all trademark licenses, including each trademark license referred to in Item B ("Trademark Licenses") of Attachment 1 hereto;

(c) all renewals of any of the items described in clauses (a) and (b);

(d) all of the goodwill of the business connected with the use of, and symbolized by the items described in, clauses (a) and (b); and

(e) all products and proceeds of, and rights associated with, the foregoing, including (i) any claim by any Pledgor against third parties for past, present, or future infringement or dilution of any trademark, trademark registration, or trademark license, including any trademark, trademark registration, trademark license or trade name referred to in Item A and Item B of Attachment 1 hereto, or for any injury to the goodwill associated with any trademark, trademark registration, trademark license, or trade name, and (ii) rights to royalties and other payments with respect to the foregoing.

The Trademark Collateral shall be subject to "Permitted Liens," as defined in the Credit Agreement.

### 3. Preservation of Trademark Collateral.

(a) Pledgor shall, unless Pledgor and the Lender reasonably determine that any of the Trademark Collateral is of insufficient economic value to Pledgor to justify such action, (i) continue to use each Trademark on each and every trademark class of goods applicable to its current line as reflected in their current catalogs, brochures and price lists in order to maintain each Trademark in full force free from any claim of abandonment for non-use, (ii) maintain as in the past the quality of products and services offered under each Trademark, (iii) employ each Trademark with the appropriate notice of its registration on applicable products or services, (iv) not (and not permit any licensee or sublicensee thereof to) do any act or knowingly fail to do any act whereby any Trademark rights may become abandoned or unenforceable, or allow any registration for a Trademark to lapse, (v) prosecute diligently any Trademark application that is pending as of the date of this Agreement or hereafter, until Pledgor's Liabilities shall have been paid in full, and (vi) preserve and maintain all rights in and to the Trademark Collateral.

(b) In the event that any of the Trademark Collateral is infringed or misappropriated by a third party, Pledgor shall promptly notify the Lender after it learns thereof and shall, unless Pledgor and the Lender shall reasonably determine that such Trademark Collateral is of insufficient economic value to Pledgor to justify such action, promptly sue for infringement or misappropriation and recover any and all damages for such infringement or misappropriation, or take such other actions as Pledgor reasonably deems appropriate under the circumstances to protect such Trademark Collateral.

(c) Except as permitted by the Credit Agreement, Pledgor shall not sell, assign (by operation of law or otherwise) or otherwise dispose of the Trademark

Collateral, or create or suffer to exist any lien, security interest, or other charge or encumbrance on or with respect to any of the Trademark Collateral to secure the indebtedness of any person.

(d) Pledgor shall pay promptly when due all taxes, maintenance fees, assessments, and governmental charges or levies imposed on, and all claims against, the Trademarks.

4. **Secured Obligations.** This Agreement and the security interest granted hereunder to the Lender secures all obligations which may be now or hereafter owing by Pledgor to Lender under this Agreement as well as any and all indebtedness, obligations or other liabilities which may be now or hereafter owing by Pledgor to the Lender under or on account of the Credit Agreement, and any other agreement, instrument or other document executed by Pledgor with or in favor of the Lender under or in connection therewith, or any extensions, renewals, refinancings, restructurings, modifications or replacements, in whole or in part, of or for any of the foregoing, and including, without limitation, any interest which would accrue on the foregoing indebtedness, obligations or liabilities but for the filing by or against Pledgor of a proceeding under any bankruptcy, insolvency, receivership or moratorium law. All of the foregoing indebtedness, obligations or other liabilities are herein collectively called the "**Secured Obligations**". As used herein, the term "**Secured Obligations**" shall include, without limitation, all Obligations pursuant to and as defined under the Credit Agreement.

5. **Representation and Warranties.** Pledgor hereby represents and warrants as follows:

(a) The Trademarks are subsisting and no registration therefor has been adjudged invalid or unenforceable, in whole or in part;

(b) To the best of Pledgor's information and belief, each of the Trademarks is valid and enforceable and Pledgor has notified the Bank in writing of all prior licenses, conveyances, and transfers of which Pledgor is aware, and of all suits pending, or litigation threatened, that relate in any way to the Trademark Collateral;

(c) Pledgor is the sole and exclusive owner of the entire and unencumbered right, title, and interest in and to all of the Trademarks, free and clear of any lien, assignment, mortgage, security interest, charge, or encumbrance, including without limitation licenses and covenants not to sue;

(d) Pledgor is not aware of any proceeding (other than application proceedings) in the United States Patent and Trademark Office or any state or federal court regarding Pledgor's claim of ownership in any Trademarks, its right to register the same, or its right to keep and maintain such registrations.

6. **Further Assurances.**

(a) Pledgor will (i) promptly notify the Lender of the institution of, or any adverse determination in, any proceeding in the United States Patent and Trademark Office, or any state or federal court regarding Pledgor's claim of ownership in the Trademarks, its right to register the same, or its right to keep and maintain any such

registration; (ii) concurrently with the filing of an application or issuance of a registration for any Trademark, will execute, deliver, and record in all places where this Trademark Security Agreement is recorded, an appropriate grant of security interest in a form acceptable to the Bank, which records the Bank's security interest in such application or registration as granted herein.

(b) Pledgor will furnish to the Lender from time to time statements and schedules further identifying and describing the Trademark Collateral and such other reports in connection with the Trademark Collateral as the Bank may reasonably request, all in reasonable detail.

7. **Security Agreement.** This Agreement has been executed and delivered by Pledgor for the purpose of registering the security interest of Lender in the Trademark Collateral described in Paragraph 2(a) with the United States Patent and Trademark Office and perfecting the security interest therein. The security interest granted hereby has been granted as a supplement to, and not in limitation of, the security interests granted to the Lender under the other Financing Documents. The Credit Agreement and the other Financing Documents (and all rights and remedies of the Lender thereunder) shall remain in full force and effect in accordance with their respective terms.

8. **Release of Security Interest.** At such time as the Secured Obligations have been paid in full and the Credit Agreement has been terminated, the Lender shall, at Pledgor's expense, execute and deliver to Pledgor all instruments and other documents as may be necessary or proper to release the lien on and security interest in the Trademark Collateral which has been granted thereunder.

9. **Acknowledgment.** Pledgor does hereby further acknowledge and affirm that the rights and remedies of the Lender with respect to the security interest in the Trademark Collateral granted hereby are more fully set forth in the Financing Documents, the terms and provisions of which (including the remedies provided for therein) are incorporated by reference herein as if fully set forth herein.

10. **Collateral Document, Etc.** This Agreement is a Security Document and a Financing Document executed pursuant to the Credit Agreement and shall (unless otherwise expressly indicated herein) be construed, administered and applied in accordance with the terms and provisions of the Credit Agreement.

11. **Counterparts.** This Agreement may be executed by the parties hereto in several counterparts, each of which shall be deemed to be an original and all of which shall constitute together but one and the same agreement.

12. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois and applicable federal laws.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized.

**Pledgor:**

**DJ PHARMA, INC.**

By: Jerry E. Canning  
Name: JERRY E. CANNING  
Title: VICE President, Finance

**BANK OF AMERICA, N.A., as Lender**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized.

**Pledgor:**

**DJ PHARMA, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BANK OF AMERICA, N.A., as Lender**

By: Paul K. Berry  
Name: Paul K. Berry  
Title: Vice President

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

**CERTIFICATE OF ACKNOWLEDGMENT**

Before me, the undersigned, a Notary Public in and for the state and county aforesaid, on this 29<sup>th</sup> day of June, 2000, personally appeared Jerry E. Canning, to me known personally, and who, being by me duly sworn, deposes and says that (s)he is the Vice Pres of Finance of DJ PHARMA, INC., and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and said officer acknowledged said instrument to be the free act and deed of said corporation.

  
Notary Public

My commission expires: 6-19-2003

[NOTARIAL SEAL]



Trademark Security Agreement

**TRADEMARK**  
**REEL: 002160 FRAME: 0187**



STATE OF ILLINOIS

COUNTY OF COOK

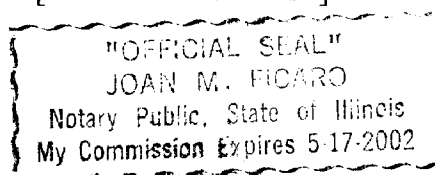
**CERTIFICATE OF ACKNOWLEDGMENT**

Before me, the undersigned, a Notary Public in and for the state and county aforesaid, on this 28 day of June, 2000, personally appeared Paul K. Berry, to me known personally, and who, being by me duly sworn, deposes and says that (s)he is the Vice President of BANK OF AMERICA, N.A., and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and said officer acknowledged said instrument to be the free act and deed of said corporation.

Joan M. Ficaro  
Notary Public

My commission expires: May 17, 2002

[NOTARIAL SEAL]



Trademark Security Agreement

CH01/12081736.2

**TRADEMARK**  
**REEL: 002160 FRAME: 0188**

Attachment 1

Item A. Trademarks and Trade Names.

No Trade Names

Trademarks:

DJ PHARMA (US Trademark App. No. 75/731,475)

DJ PHARMA (US Trademark App. No. 75/731,400)

PARTNER BEYOND PRESCRIPTION (US Trademark App. No. 75/731,424)

The above trademark applications were filed with the United States Patent and Trademark Office on June 17, 1999.

Item B. Trademark Licenses.

Keftab Trademarks (licensed from Eli Lilly and Company)

KEFTAB®

Cold, Cough and Allergy Trademarks (owned by and licensed to DJ Pharma by Dura Pharmaceuticals, Inc.)

D.A. CHEWABLE™

D.A. II®

DURA-GEST®

DURA-TAP® / PD

DURA-VENT®

FENESIN™

GUAI-VENT™ / PSE

Rondec Trademarks owned by Abbott Labs (and licensed to DJ Pharma)

RONDEC®

RONDEC-TR®

Cedax Trademarks owned by Schering Corp. (and licensed to DJ Pharma)

CEDAX® (U.S. Trademark Registration No. 1610363)